IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1171 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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MANGAJI @ MANGO BHODALO SAKRAJI THAKOR - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Applicant(s) : 1,
Ms. HANSA B. PUNANI, Ld.APP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 27/10/2005

ORAL JUDGMENT

1. The order of externment dated 10.06.2005 passed by the respondent no.2 in exercise of powers under Section 56(b) of the Bombay Police Act and the order dated 25th August, 2005 passed by respondent no.1 confirming

earlier order of the Competent Authority, in appeal in exercise of powers under Subsection 3 of Section 60 of the Act, have been challenged in this petition under Article 226 of the Constitution of India. That both the impugned orders are violative or principle of natural justice, and therefore, arbitrary and violative of articles 14,19 and 21 of the Constitution of India.

2. The show cause notice dated 09.09.2003 under Section 59 of the Act was issued and final reply was submitted by the externee and considering the various aspects and the materials produced before the externing authority, it was found that the petitioner, being head-strong person indulging into criminal activities and particularly reliance was placed upon the offence registered being C.R.No.24 of 2001 and another prohibition C.R.No.5140 of 2003 registered at Shaher

Kotda Police Station. Collectively, it was found that the activities of the externee required immediate exercise of powers under the Act. Therefore, he was asked to show cause as to why he should not be externed from the city limit of Ahmedabad, Ahmedabad Rural, Gandhinagar, Kheda and Mahesana for the period of 2 years.

3. In the written submissions preferred by the petitioner, allegations in show cause notice were denied and it was submitted that the petitioner being rickshaw driver and hailing from lower strata of the society has been implicated in such criminal activities.

4. After considering reply submitted by the externee, the externing authority passed an order on 10.06.2005 by which the petitioner was externed from the city limit of Ahmedabad Rural, Gandhinagar and Kheda, Mahesana for a

period of 2 years.

5. The aforesaid order was challenged by filing an appeal under Section 60 of the Act and it was submitted that the order of the Competent Authority is illegal and proper opportunity was not given to detenue to defend his case and the submission placed by the petitioner in his reply to the show cause notice were not considered by the Competent Authority in its correct perspective and the reliance was placed by the authority on stale offences.

6. The appellate authority after considering the grounds raised in appeal, found that two offences have been registered against the externee i.e. (1) being C.R.No.24 of 2001 for the offences punishable under Sections 143, 147, 149 and 336 of Indian Penal Code and also under Section 135 of the Bombay Police

Act and another (2) Pro.Offence Register No.5140/2001 for the offences under Sections 66(b) and 65(e) of the Bombay Prohibition Act and even during the course of the proceedings under the Act also three more offences came to be registered under the Prohibition Act. The appellate authority also considered the statement of 8 secrete witnesses whose names were not disclosed to the petitioner due to fear expressed by them in order to save their lives.

7. The appellate authority considered the above aspect and confirmed the order of externing authority.

8. Learned advocate for the petitioner has challenged both the orders on several grounds but restricted his submission on the ground that the concerned authority has taken into consideration the offences registered against the petitioner under the provisions of Bombay Prohibition Act, 1949, for which power cannot

be exercised by the authority under Section 56(2) of the Act. He has further submitted that the reliance was placed by the appellate authority on the statements of 8 secrete witnesses, to which no mention was made in the show cause notice and for which no opportunity was given to the petitioner, which resulted into adverse consequences and right to defend the case effectively of the petitioner was jeopardized. To this extent the order of the Competent Authority was violative of rule of principle of natural justice. Besides, the learned counsel for the petitioner has submitted that the show cause notice being devoid of specific allegations and date time, and place of the offences as alleged, being unclear and non-specific is a case of non-application of mind and therefore also order being unreasonable, arbitrary and violative of articles 14, 19 and 21 of the Constitution of India, requires to be quashed

and set aside.

9. He has further submitted that the order of the appellate authority has travelled beyond the scope of show cause notice since number of entries weighed with the appellate authority while confirming the order of externment, for which no reference was made in the show cause notice and for this purpose he submitted that as per Appellate authority while confirming the externing authority, reliance was placed on three offences, registered under the Bombay Prohibition Act, 1949, during the proceedings of externment, for which the petitioner was not asked to show cause and therefore also reliance was placed on the decision of this Court reported at 2003 Cri.Law.J. Page-4379 and it was submitted that when the order is beyond the scope of the show cause notice or travel led beyond the show cause notice, the findings of

such authority being required to be set right in exercise of powers under Article 226 of the Constitution of India. He has also placed reliance upon the decision reported at 2002 GLR 1026 for the submission about vagueness of show cause notice and reference was made about prohibition act for which powers have been exercised under Section 56(b) of the Act.

10. Learned APP Mrs. Hansa Punani has submitted that considering the material on record, the concerned authorities have found the activities of the petitioner which require exercise of powers under the Act, and therefore, no interference is required under Article 226 of the Constitution of India.

11. Having perused records and considering submissions of learned advocate for the parties, it is evident from the record of the

case that the orders impugned, specifically of the appellate authority has travelled beyond the scope of show cause notice by which reliance is placed on the offences registered under the Bombay Prohibition Act, during the course of externment proceedings against the petitioner, for which no opportunity to defend or to represent was given to the petitioner, which is clearly violative of principles of natural justice and the petitioner is externed without being heard properly. Therefore, exercise of powers by the appellate authority in confirming the order of the Exeterning Authority is unreasonable, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India, inasmuch by exercise of powers under this Act right to freedom and right to life and liberty as guaranteed under Part-3 of the Constitution of India to the petitioner being a citizen of India is taken away by the

authority without following due procedure of law. The reliance was placed by the learned advocate on the judgment of this Court reported at 2003 Cr.L.J. 4379 is clearly applicable in the present case and the orders of the appellate authority suffers from the vice of violative of principles of natural justice and requires to be quashed and set aside.

Besides the second submission about vagueness of show cause notice issued to the petitioner by the Competent Authority, where no date or place, or the area of operation is specifically mentioned and even gist of the statements relied upon by the concerned authority were not given to the petitioner and accordingly reliance placed upon the decision reported in 1999 (1) GLH 1026 are equally applicable in the facts of the present case. Considering even the submission

12. For the reasons recorded hereinabove, the order of externing authority dated 10.06.2005 passed by the respondent no.2 and the order dated 25.08.2005 passed by the appellate authority confirming the order of externment passed against the petitioner, are hereby quashed and set aside. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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